

REMARKS

Claims 1, 2, and 11-28 are pending in this application. As recited below, the Office Action imposed a restriction requirement that restricted the claims into three groups.

Group I – Claims 1, 11, 12, 15, 18, 20-21, and 26-27, drawn to a method of detecting hepatic function in an avian or reptilian subject comprising measuring a change in one wavelength to obtain a diagnosis of hepatocellular swelling, hepatic fibrosis, hepatic inflammation, red cell hemolysis, bile duct inflammation or obstruction, erythrocyte destruction, or hemoglobin degradation.

Group II – Claims 2, 13-14, 16-17, 19, 22-23, and 28, drawn to a method of detecting hepatic function in an avian or reptilian subject comprising measuring a change in two different wavelengths to obtain a general diagnosis of hepatic disease.

Group III – Claims 24-25, drawn to a method of monitoring the efficacy of drug therapy in an avian or reptilian subject comprising assessing hepatic function by comparing biliverdin amounts and adjusting drug therapy by changing the drug, the dose, or frequency of the therapy.

(Office Action, p. 3). Regarding the restriction of the currently pending claims, the Office Action stated:

The steps required by each method are different and distinct from one another because a different wavelength is required to be measured by Group II . . . Although each require measurement of biliverdin, the steps required for measuring biliverdin in a sample are different and distinct from the other and a different diagnosis and/or result can be obtained from each of these distinct methods. Hence each method possesses its own technical features based upon the steps required for carrying out each independent and distinct method. Different wavelengths are required to be measured by Group II for calculating biliverdin amounts which are not required of Group I . . .

(Office Action, p. 3). Applicants respectfully submit that Groups I and II should not be restricted. Each of the methods of Groups I and II require measurement of biliverdin by absorbance values. Applicants respectfully submit that these methods do not require restriction.

With respect to the restriction of Groups I and II, the Office Action does not comply with M.P.E.P. § 803, which provides:

If the search and examination of an application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

As required by M.P.E.P. § 803, the Office Action must demonstrate: (1) that there are independent and distinct inventions (35 U.S.C. § 121); and (2) that the search and examination of the entire application cannot be made without serious burden. The Office Action fails to meet both requirements.

The Office Action found that the claims of Group I comprise measuring a change in absorbance value in at least one wavelength, and that the claims of Group II comprise measuring a change in absorbance value in at least two wavelengths. A change in absorbance value measured in these claims may be used to calculate an amount of biliverdin in a sample. Applicants respectfully submit that the currently pending claims of Groups I and II are related to a single general inventive concept – that is, a method of detecting hepatic function in an avian or reptilian subject by measuring a change in absorbance value.

The search and examination of the currently pending claims of Groups I and II do not impose upon the Examiner a serious burden. The Office Action stated that “different wavelengths are required to be measured by Group II for calculating biliverdin amounts which are not required of Group I.” (*See* Office Action, p. 3). Applicants respectfully submit that this statement is in error. The currently pending claims of Groups I and II comprise measuring a change in absorbance value in a wavelength range of about 325 nm to about 750 nm. Applicants respectfully submit that a search directed to the wavelength range of Group I would identify art relevant to the other group. The concurrent examination of Groups I and II will not expand the Examiner’s search, and can be done without the imposition of a serious burden upon the Examiner.

For at least these reasons, Applicants respectfully request that the Examiner amend the Office Action, and examine the currently pending claims of Group I and II. In order to facilitate the prosecution of this application and to comply with 37 C.F.R. § 1.499, Applicants elect with traverse Group I (Claims 1, 11, 12, 15, 18, 20-21, and 26-27) for prosecution. Applicants reserve the option of prosecuting the restricted claims at another time or requesting rejoinder of the restricted claims once allowable claims are found.

CONCLUSION

The foregoing is a complete response to the Office Action mailed January 5, 2010. For at least the reasons provided above, Applicants respectfully request allowance of all of the pending claims. Early and favorable consideration is solicited. If a telephone conversation would expedite the prosecution of these claims to issuance, then Applicants' representative invites and encourages the Examiner to contact the Applicants' representative at the telephone number listed below.

Applicants file this Response solely to facilitate prosecution. As such, Applicants reserve the right to pursue claims of broader or similar scope as originally filed in a continuation application or other application after allowance of the present application. Applicants do not concede that the current or past rejections are correct and reserve the right to challenge such rejections later in prosecution or on appeal. Accordingly, any amendment, argument, or claim cancellation is not to be construed as abandonment or disclaimer of subject matter. Because certain of the current amendments may include broadening amendments, Applicants respectfully request that the Examiner revisit any previously reviewed references cited in this Application to further ensure that the currently pending claims remain patentable over any previously reviewed references.

Applicants do not believe that a fee is due; however, Applicants authorize the Commissioner to charge to Deposit Account No. 14-0629 any fees that may be required.

Respectfully submitted,

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